IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 711 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

==========

NEW INDIA ASS. CO. LTD. & 2 - Appellant(s)
Versus
SHANTABEN WD/O R A CHAUHAN & 4 - Defendant(s)

==========

Appearance :
MR RAJNI H MEHTA for Appellant(s) : 1,
None for Defendant(s) : 1 - 5.

==========

CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 24/07/2006

ORAL JUDGMENT

1. By way of this appeal under Section 110-D of the Motor Vehicles Act, 1939, the original opponent no.3 – present appellant has challenged the judgement and decree dated 22.12.88 passed by the Motor Accident Claims Tribunal, Sabarkantha at Himmatnagar in M.A.C.P No.380 of 1984 whereby the Tribunal directed the original opponent nos. 1, 2 & 3 to jointly pay a compensation of Rs. 77,000/- with interest at the rate of 12% per annum and proportionate costs.

2. The original applicants-present respondents being

the legal representatives and heirs of the deceased had filed a claim petition seeking compensation for Rs. 1,00,000/- in respect of the vehicular accident which had occurred on 13.01.84 near Pahadpur Stand while the deceased was travelling in a truck bearing no. GTB 3036. The truck which belonged to original opponent no. 2 was being driven by original opponent no.1 at an excessive speed. Due to such rash and negligent driving, the side wooden plank of the carrier opened suddenly and the deceased fell down as a result of which he was run over by the moving truck. The Tribunal after hearing the parties passed the aforesaid award.

3. Mr R.H Mehta, learned advocate for the appellant has contended that the present appellant ought to have been held not liable to pay the compensation amount as there is a specific condition in the policy not to use the vehicle for hire or reward. He has further contended that the Tribunal failed to appreciate the scope of a “Private Carrier's permit” which prohibits carriage of public goods as well as passengers.

3.1 Mr Mehta has placed reliance on various decisions of this Court and the Apex Court in order to substantiate his contentions. The decisions relied by him are in the

cases of Vanaji Dhulaji v Shivabhai Kashibhai reported in AIR 1980 Gujarat 154, Mallawwa and others v Oriental Insurance Co. Ltd. and others reported in 1999 ACJ 1, Oriental Insurance Co. Ltd v Devireddy Konda Reddy reported in 2003 SC 1009[2003(2) SCC 339] and New India Assurance Co. Ltd v Asharani reported in 2003(2) SCC 223.

4. Heard learned counsel for the parties. I have gone through the averments made in the appeal and documents placed on record including the award of the Tribunal. From the perusal of the award, it is clear that the present appellant had strongly contended before the Tribunal that the truck bearing no. GTB 3036 was a goods vehicle and under the terms and conditions of the policy it was to be used only under a private carrier permit and that the policy does not cover the risk for the use of the truck for the conveyance of passenger for hire or reward.

4.1 A perusal of the decisions relied on by the learned counsel for the appellant is relevant at this stage and the same is considered one by one. In the case of Vanaji Dhulaji (supra), this Court has held that vehicle not covered by permit to ply for hire or reward on date of contract of insurance used for that purpose in breach of

specific condition in policy which excluded such use and the insurance company is not liable to satisfy award against insured in respect of third party risks.

4.2 In the case of Mallawa and others(supra) the Apex Court has held that the insurance company is not liable for death or injuries sustained by persons carried in a goods vehicle either along with their goods or after paying fare or gratuitously.

4.3 In the case of Oriental Insurance Co. Ltd (supra) the Apex Court has taken the view that the provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefore.

4.4 In the case of New India Assurance Co. Ltd (supra), keeping in view the provisions of the 1988 Act, the Apex Court has taken the same view as in Oriental Insurance Co. Ltd (supra) that as the provisions do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefore.

5. As a result of hearing and perusal of records and in view of the decisions of this Court and the Apex Court, I am of the opinion that the contentions raised by the appellant is required to be accepted. The fact that the vehicle in question was a goods vehicle cannot be disputed and therefore the appellant cannot be held liable to undertake third party risk in a case where the vehicle is used for a purpose other than the one for which the policy is covered. In that view of the matter, the award of the Tribunal is required to be modified by not holding the present appellant liable for the compensation payable to the present respondent no.1.

6. In the premises aforesaid, the appeal is allowed accordingly. The award of the Tribunal is quashed and set aside qua liability of the insurance company-present appellant. The amount deposited by the insurance company by way of Fixed Deposit, if any, shall be refunded to the insurance company. It is made clear that in case the amount has already been withdrawn by the original claimants, it will be open for the insurance company to recover the same from the owner of the vehicle. No order as to costs.

(K.S. JHAVERI, J.)

Divya//